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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re K.B., a Person Coming Under the  
Juvenile Court Law.

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.R. et al.,

Defendants and Appellants.

E071755

(Super.Ct.No. J277765)

OPINION

APPEAL from the Superior Court of San Bernardino County. Annemarie G.  
Pace, Judge. Dismissed.

Powell & Associates, Robert R. Powell and Sarah E. Marinho, for Defendant and  
Appellant S.R.

Michelle D. Peña, under appointment by the Court of Appeal, for Defendant and  
Appellant T.B.

Michelle D. Blakemore, County Counsel, and Svetlana Kauper, Deputy County Counsel, for Plaintiff and Respondent.

The juvenile court found true an allegation in the first amended juvenile dependency petition, found K.B. (Minor) a dependent of the court, placed Minor with defendant and appellant S.R. (Mother) on family maintenance, and authorized the social worker to dismiss the case by approval packet. On appeal, Mother and defendant and appellant T.B. (Father) (collectively Parents) contend insufficient evidence supported the court's finding of jurisdiction over Minor. We dismiss the appeal.

## I. FACTUAL AND PROCEDURAL HISTORY

According to the initial detention report, on September 6, 2018, personnel from plaintiff and respondent San Bernardino County Children and Family Services (CFS) received a referral alleging physical abuse and general neglect. A social worker investigated the allegations the next day. Medical staff at Hi Desert Medical Center (HDMC) reported Mother told them Minor was sleeping on the bed and rolled off it, approximately three feet, onto a tile floor. Minor had redness on the left side of his forehead but no other apparent injuries. Medical staff kept Minor for observation for several hours; no scans were performed as the attending physician did not feel they were necessary. Minor was released that evening to Mother. The reporting party said Mother's story was of concern because Minor was only 20 days old.

The social worker met with Mother and the maternal grandmother (MGM). The MGM took over the interview, not allowing Mother to speak freely. The MGM reported she was a registered nurse and had no concerns for Minor's wellbeing.

Mother reported she left Minor unattended about one and a half feet from the edge of the bed and went to the restroom. As she exited the restroom, she saw Minor fall off the bed. Mother said the child rolled over, falling off the bed and "landing on his back onto the tile floor." The MGM said that 20-day-old infants are able to roll over. The social worker noted infants are not able to roll over at that age.

The MGM reported that she and Mother immediately took Minor to the hospital to have him assessed. The attending physician told them no scans were necessary but to take him to his primary doctor the next day. The social worker suggested that Mother have Minor assessed at Loma Linda University Medical Center (LLUMC), but said that it was Mother's decision.

The social worker spoke to the attending physician who said Mother's story about Minor "rolling off the bed did not make sense and it is his opinion that she is not telling the truth." He said Minor "had a red superficial mark on his forehead that faded during the time the baby was at the hospital for observation."

The social worker consulted with a forensic doctor who expressed concern about Minor's head injury and recommended that Minor be brought to LLUMC ER immediately: "She related that the statement provided by mother [wa]s not plausible and

the concern for such a young child with a head injury is possible skull fracture and brain bleed.”

The social worker obtained a detention warrant and a sheriff’s deputy assisted in an attempt to serve it on Mother on September 7, 2018; however, no one responded at Mother’s home. The maternal grandparents later contacted the deputy as they had observed him outside their home via security camera. The deputy informed them of the reasons for his presence at the home. The deputy and social worker returned to the home at 10:00 p.m., but, again, there was no response.

The next morning, they returned to the home, but, yet again, there was no response. Around 1:30 p.m., they attempted service a fourth time, but again there was no response. The social worker observed there were two vehicles parked outside the home which were not there earlier in the day.

On September 11, 2018, CFS personnel filed a juvenile dependency petition alleging the following: Mother had left her 20-day-old infant unsupervised on the bed which he then “ ‘rolled off’ ” onto the tile floor sustaining a head injury (a-1); Mother had left her 20-day-old infant unsupervised on the bed which he then “ ‘rolled off’ ” onto the tile floor sustaining a head injury (b-2); Mother failed to follow the social worker’s advice to have Minor reassessed at LLUMC (b-3); Father knew or reasonably should have known that Minor was at substantial risk of harm in Mother’s care (b-4); and that Father’s whereabouts were unknown (g-5). Parents were not present at the detention

hearing on September 12, 2018. The court found a prima facie case for detention of Minor and signed a warrant of apprehension.

Parents appeared at a hearing on September 19, 2018. Father's counsel noted that Father had been away at Humboldt State University where he was a student. Father's counsel requested that Father be assessed for placement or that the court allow Father to make arrangements for Minor to be placed elsewhere. Father's counsel opined, "I don't think Father needs to be a part of this case."

Mother's counsel noted: "I understand there was already a detention hearing. [Counsel] filed a motion to have the detention issues reheard, and we also understand that motion was denied."<sup>1</sup> The court affirmed that the motion had been denied. Mother's counsel requested the court reconsider the motion and grant Parents a contested detention hearing. The court denied the request.

The court advised "father of his potential liability to reimburse the Court for appointed counsel, including fees and costs for both yourself and for [Minor]." The court ordered Father to comply with a financial evaluation and that "[f]ailure to comply may

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<sup>1</sup> On February 5, 2019, Mother filed a motion to take additional evidence consisting "of the motion to have a contested detention hearing" as it is not contained in the record or the juvenile court file. However, Mother "concedes this motion to take additional evidence is not necessary because the record contains argument that the motion was actually filed and denied . . . ." The attached "motion" is actually titled "Notice of Special Hearing" and, although not explicitly requesting a contested detention hearing, indicates that Parents could present both documentary and oral evidence that there was no basis for detaining Minor. By order dated February 25, 2019, we reserved ruling on the motion for consideration with the appeal. We now grant the motion to take the additional evidence.

result in a judgment for the full amount, and that judgment is enforceable as a civil judgment.”

In the jurisdiction and disposition report filed October 5, 2018, the social worker reported that Mother had informed her that, as instructed by the attending physician, Mother had made an appointment with a pediatrician the day following Minor’s evaluation at HDMC. The pediatrician examined Minor. Mother informed the pediatrician that the social worker had advised having a CT scan. The pediatrician consulted with another doctor; Mother was then recommended to take Minor to Desert Regional Medical Center (DRMC) for an ultrasound.

Mother reported she took Minor to DRMC where he was assessed by two doctors. The doctors decided not to conduct an ultrasound because Minor appeared fine.

On September 11, 2018, Mother and the MGM took Minor to Dr. Grogan, an orthopedic surgeon, who conducted a full body X-ray on Minor. He determined everything with Minor “was normal.” In a letter dated September 13, 2018, Dr. Grogan stated, “I see no evidence of any sort of inflicted abuse.”

Mother said she did not comply with the social worker’s suggestion to obtain a CT because medical professionals had informed her that Minor would be at more risk due to the level of radiation from a CT scan. Mother “explained that if she knew that her decision would have repercussions she would have taken the child to LLU[MC].”

Mother provided consent for CFS to obtain Minor’s medical records. Records from HDMC dated September 6, 2018, reflected that Mother reported the following:

“ ‘after feeding [Minor] she laid him on the end of the bed to change his diaper, she walked away for [one] second and the baby fell off the bed. She states the baby does not roll over yet, but he did today.’ ”

The social worker interviewed Father who said he was not present at the time of the incident. He received a call from Mother about Minor’s fall but was later informed that Minor was fine after he had been taken to and observed at the hospital. Father said he drove down from Humboldt and he and Mother drove Minor to the children’s hospital at LLUMC as instructed by CFS personnel.

The social worker reported that Mother informed her Mother did not actually see Minor “fall off the bed so she is unsure how the incident occurred. She insisted that she had only assumed that her child rolled off the bed and that the red mark on his forehead may have been caused by hitting his head on the bed during the fall.” The social worker found Mother’s explanations inconsistent and had concerns that Mother was not being completely honest.

The social worker reported that they were unable to serve the detention warrant as Mother “appeared to have absconded with the child.” “Although [] [M]other reported that she wasn’t initially aware of the warrant, she and [the MGM] became fully aware of the warrant on [September 14, 2018,] during phone conversations with [CFS personnel]. The family was instructed to bring the child to local law enforcement so that the child can be taken into custody and [] [M]other failed to do so. [] [M]other finally brought the child to LLU[MC] on [September 17, 2018,] at which time the child was assessed and

taken into custody.” A doctor at LLUMC “assessed the child and reported that all of the tests came back normal.”<sup>2</sup> The social worker opined that she did not believe Mother intentionally harmed Minor but was not being honest about how the child fell off the bed and sustained the mark.

Mother was having daily visits with Minor and CFS personnel were looking to expand Mother’s visitation to unsupervised once she engaged in therapy and the therapist reported there were no concerns. The social worker opined the prognosis for reunification was good.

The social worker noted Father wished to take Minor into his care. The social worker opined that placement with Father was not feasible as Father did not have appropriate housing, provisions, or childcare because he was a full-time student living in Humboldt. Placement with Father would also take Minor away from Mother who was nursing and bonding with Minor. Father had engaged in unsupervised visitation with Minor but had returned to Humboldt.

The social worker obtained a copy of Minor’s birth certificate listing Father as the father. Father also signed a Voluntary Declaration of Paternity. Thus, the social worker recommended the court find Father Minor’s presumed father. The maternal grandfather

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<sup>2</sup> There is no indication in the record as to whether LLUMC personnel performed a CT scan on Minor.



was cleared for emergency placement and Minor was placed in his care on September 28, 2018. Mother completed a court-approved parenting class on November 15, 2018.<sup>3</sup>

At a hearing on October 10, 2018, the court continued the matter for CFS personnel to file an amended petition, for the parties to engage in a pretrial settlement conference, and for a contested jurisdiction and disposition hearing.

On October 26, 2018, CFS personnel filed a first amended juvenile dependency petition. The petition alleged there was a substantial risk Minor would suffer serious physical harm inflicted nonaccidentally due to the fact that Minor had sustained an injury resulting in a left forehead abrasion while in Mother's care (a-1). The petition also alleged Minor had suffered a left forehead abrasion while in Mother's care (b-2). In the amended detention report, the social worker "stressed the concern that the attending physician was more focused about 'radiation' from [a] CT scan on the child than the head injury." The social worker "expressed concerns for the baby's health as he could develop symptoms later and noted that it is best to know right away that there is no skull fracture or subdural hematoma."

At the amended detention hearing on October 29, 2018, Mother submitted on detention.<sup>4</sup> Counsel for CFS observed, "[T]he Department's recommendation is

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<sup>3</sup> It is unclear how this document, and several others, which postdate the date of the filing of the jurisdiction and disposition report could have been included in that report.

<sup>4</sup> The reporter's transcript actually reads that Mother's counsel stated, "submit on detention with Father." This appears to be a transcription error as Father's counsel was present and noted, "There are no allegations against Father."

family—remains family reunification services to Mother and family reunification services to Father as a mere biological father.”<sup>5</sup> The court detained Minor on the amended petition.

At the contested jurisdiction and disposition hearing on November 20, 2018, the court observed, “I think it’s been resolved; is that correct?” Counsel for CFS responded, “Yes.” “[W]e do have an agreement to dismiss the (a)1 allegation. [¶] Mother is submitting on the (b)2 allegation. However, there’s a change—a slight change to the wording on (b)2.” The change in wording as to the b-2 allegation deleted the language “left forehead abrasion” and replaced it with “red mark.”

The court dismissed the a-1 allegation, found the b-2 allegation true as amended, declared Minor a dependent of the court, and ordered Minor placed with Mother on family maintenance services. As to Father, the court found him the presumed father of Minor and noted “non-removal from Dad.” The court ordered, “Dismissal is by approval packet; info packet in 45 days regarding Mom’s progress.”

## II. DISCUSSION

Both Parents’ primary argument on appeal is that insufficient evidence supports the juvenile court’s finding of jurisdiction over Minor. However, Parents raise a number of other issues including the following: 1) the court erred in issuing the initial detention warrant; 2) Parents were deprived of due process when the court held the initial detention

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<sup>5</sup> This would appear to be a misstatement by counsel for CFS as the social worker had already obtained a copy of Minor’s birth certificate listing Father as Minor’s father and a signed Voluntary Declaration of Paternity by Father. Thus, the social worker had already recommended the court find Father the presumed father of Minor.

hearing without notice to either Parent; 3) the court erred in denying Mother's request for a contested detention hearing; 4) the court should have declared Father the presumed father of Minor at the hearing on September 19, 2018; and 5) CFS personnel violated Mother's constitutional right to determine the proper medical treatment for Minor.<sup>6</sup>

CFS responds that the appeal must be dismissed as moot because the court dismissed the dependency proceedings on January 16, 2019, approximately two months after the judgement appealed by Parents.<sup>7</sup> CFS further argues that Father was not aggrieved by the jurisdictional order and, therefore, lacks standing to appeal and that his appeal must be dismissed. CFS maintains that Mother's appeal must also be dismissed pursuant to the disentanglement doctrine because Mother frustrated the investigation and service of the detention warrant by evading service of the warrant. CFS also contends Mother waived any challenge to notice by making a general appearance, forfeited any challenge to the detention warrant by not challenging it below, and waived any challenge to the jurisdiction finding by negotiating a settlement. CFS argues Father forfeited any challenge to the assumption of jurisdiction by submitting on the social worker's

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<sup>6</sup> However, Mother notes in her reply brief that she "is not challenging the collateral orders, but using them to demonstrate the bias of the juvenile court."

<sup>7</sup> On March 25, 2019, CFS filed a "request to augment in support of motion to dismiss." By order dated April 19, 2019, we deemed the request to augment the record a request for judicial notice and reserved ruling for consideration with the appeal. We also denied the motion to dismiss without prejudice to CFS raising it in its brief, which it has done. Mother filed no opposition to the motion to dismiss or the request for judicial notice in support of it. Father filed opposition to the motion to dismiss, but does not oppose respondent's request to augment if construed "as a motion for judicial notice . . . ." We hereby grant the request for judicial notice and rule on the motion to dismiss in the body of this opinion.

recommendation. Finally, CFS maintains sufficient evidence supports the juvenile court's finding of jurisdiction. We agree the appeals must be dismissed because the court's subsequent dismissal of the proceedings renders the appeals moot.

A. Mootness

CFS maintains the appeals must be dismissed as moot. We agree.

“[A]ppellate courts routinely consider limited postjudgment evidence in the context of” motions to dismiss. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 676) “As a general rule, it is a court's duty to decide ‘ ‘actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.’ ” ’ [Citation.] An appellate court will dismiss an appeal when an event occurs that renders it impossible for the court to grant effective relief. [Citation.] Still, a court may exercise its inherent discretion to resolve an issue when there remain ‘material questions for the court's determination’ [citation], where a ‘pending case poses an issue of broad public interest that is likely to recur’ [citation], or where ‘there is a likelihood of recurrence of the controversy between the same parties or others.’ [Citation.]” (*In re N.S.* (2016) 245 Cal.App.4th 53, 58-59 [Appeal dismissed as moot where, post-appeal, the mother was awarded custody of the minor and the dependency proceedings had been dismissed.]) “[T]he critical factor in considering whether a dependency appeal is moot is whether the appellate court can provide any effective relief if it finds reversible error.” (*Id.* at p. 60 [Because the jurisdictional

findings were not the basis of any current order that was adverse to the mother, the appeal was dismissed as moot.].)

Here, on January 16, 2019, CFS personnel wrote, of the then current circumstances, that Mother “has been cooperative throughout the case and went above and beyond to complete her services in a timely manner.” Mother’s “home is beautifully maintained and furnished and has everything needed to create a safe and supportive environment for [Minor]. [Mother] has a large support network of family and friends, which she utilizes on a daily basis. [Mother] is a loving mother and is very attentive to her infant’s needs.” CFS personnel recommended the juvenile court dismiss the case as “conditions no longer exist justifying initial jurisdiction.” The court discharged Minor as a dependent of the court and dismissed the case. Thus, reversal of the jurisdictional order would not provide Parents with any effective relief beyond that which they have already obtained. Therefore, the appeal must be and is dismissed as moot.

Mother contends the matter should not be dismissed as moot because “this case poses an issue of broad public interest that is likely to recur.” This is because, according to Mother, the juvenile court took jurisdiction over a minor who had not suffered serious physical harm and there was no substantial risk that he would suffer harm. However, this type of argument would require that this court address the merits of Mother’s substantive contention in order to reach the question of its mootness, effectively putting the cart before the horse. Moreover, Mother fails to show how this case is of broad public interest or that a similar case is likely to recur.

Mother also argues that the jurisdictional finding subjects Mothers to a record with CFS “which is deeply stigmatizing and could impact [Mother’s] future career prospects . . . .” However “jurisdiction is asserted over the child, not the parent.” (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1493, fn. omitted.) “A petition is brought on behalf of the child, not to punish the parents. [Citation.]” (*In re La Shonda B.* (1979) 95 Cal.App.3d 593, 599.) “The purpose of a dependency proceeding is to *protect the child*, rather than prosecute or punish the parent. [Citations.]” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1395, abrogated on another basis in *In re R.T.* (2017) 3 Cal.5th 622.) Thus, it is difficult to see how the jurisdictional finding “stigmatizes” Mother; this is particularly so where the records of dependency proceedings are maintained confidentially. (Cal. Rules of Court, rule 5.552)

Father contends the appeal should not be found moot because the jurisdictional finding “mars Father’s record for the rest of his life. This case will be an obstacle for Father should he have any future children involved in the juvenile dependency system, attempt to adopt a child, or have any career interests involving children.” For the same reasons discussed above, Father’s claim similarly fails. Moreover, Father was a non-offending parent. No allegation pertaining to Father remained in the amended dependency petition or was found true by the juvenile court. Indeed, the juvenile court expressly found it was issuing a “non-removal” order as to Father. Thus, Father not only currently suffers from nothing which this court can remedy, he did not suffer from any adverse consequences even before the juvenile court dismissed the case.

Father additionally argues he may suffer “financial responsibilities stemming from this erroneous jurisdictional finding . . . .” Indeed, at Father’s first appearance, the juvenile court explicitly told Father he could suffer “potential liability to reimburse the Court for appointed counsel, including fees and costs for both yourself and for [Minor].” However, this was when there were still allegations against Father from the initial dependency petition. Since that time, the filing of the amended dependency petition eliminated all allegations against Father. Thus, Father should be able to utilize that fact as a defense to any speculative fees he might be assessed in the future. Therefore, the appeal remains moot.

### III. DISPOSITION

The appeal is dismissed.

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McKINSTER  
J.

We concur:

RAMIREZ  
P. J.

FIELDS  
J.